

1-1 By: Estes S.B. No. 248
1-2 (In the Senate - Filed December 7, 2010; January 31, 2011,
1-3 read first time and referred to Committee on Agriculture and Rural
1-4 Affairs; March 17, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 3, Nays 0;
1-6 March 17, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 248 By: Hegar

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of public grain warehouse operators.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Section 14.012, Agriculture Code, is amended to
1-13 read as follows:
1-14 Sec. 14.012. BUSINESS INFORMATION. (a) Except as provided
1-15 by Subsection (b), financial information of a warehouse operator
1-16 provided to the department [~~The following information, prepared by~~
1-17 ~~the department in the course of its regulatory authority under this~~
1-18 ~~chapter or required to be submitted to the department in accordance~~
1-19 ~~with the department's administration of this chapter,~~] is
1-20 confidential and not subject to public disclosure[+
1-21 ~~(1) inspection or investigation reports containing~~
1-22 ~~information regarding grain inventory; and~~
1-23 ~~(2) financial information provided to the department~~
1-24 ~~to establish net worth for purposes of licensing].~~
1-25 (b) Notwithstanding Subsection (a), [~~inspection reports~~
1-26 ~~containing information regarding grain inventory of a warehouse~~
1-27 ~~operator or]~~ financial information of a warehouse operator provided
1-28 to the department [~~to establish net worth]~~ may be disclosed:
1-29 (1) [~~entered into evidence]~~ without sealing [~~and made~~
1-30 ~~public]~~ in[+
1-31 ~~(A)]~~ an administrative proceeding commenced by
1-32 the department against the [~~a~~] warehouse operator;
1-33 (2) to a local or state law enforcement officer,
1-34 [~~(B) a civil or criminal proceeding commenced by]~~ a county
1-35 attorney, a district attorney, or the attorney general, acting
1-36 either independently or on behalf of the department, investigating
1-37 the [~~against a~~] warehouse operator; [~~or~~]
1-38 (3) in [~~(C)]~~ a civil proceeding commenced by the
1-39 warehouse operator against the department;
1-40 (4) in response to a subpoena from a party in a civil
1-41 proceeding commenced against the warehouse operator;
1-42 (5) [~~(2) provided]~~ to the issuer of the [~~a~~] warehouse
1-43 operator's bond or letter of credit [~~for the purpose of~~
1-44 ~~establishing a claim on the warehouse operator's bond or letter of~~
1-45 ~~credit];~~
1-46 (6) [~~(3) disclosed]~~ to the public after:
1-47 (A) revocation of the [~~a~~] warehouse operator's
1-48 license;
1-49 (B) a voluntary closeout of all of the license
1-50 holder's facilities in this state;
1-51 (C) a petition for bankruptcy has been filed; or
1-52 (D) a receiver [~~is appointed]~~ for the warehouse
1-53 operator's assets has been appointed; or
1-54 (7) [~~(4) disclosed]~~ to any federal agency or any
1-55 agency of another state conducting a compliance inspection or
1-56 criminal or civil investigation involving the handling, storing,
1-57 shipping, selling, purchasing, or receipt of grain.
1-58 (c) In this section, "financial information" means:
1-59 (1) a financial statement or other document provided
1-60 by the warehouse operator to the department to evaluate net worth
1-61 requirements under Section 14.031(e);
1-62 (2) a financial audit provided by the warehouse
1-63 operator to the department; and

2-1 (3) if the warehouse operator is subject to an ongoing
2-2 investigation by the department:
2-3 (A) the price of grain paid by the warehouse
2-4 operator to a depositor or other seller of grain delivered to or
2-5 stored or handled by the warehouse operator;
2-6 (B) the price of grain paid by or to the warehouse
2-7 operator by a depositor or other purchaser of grain delivered to or
2-8 stored or handled by the warehouse operator; and
2-9 (C) the terms of payment for a price described by
2-10 Paragraph (A) or (B).
2-11 (d) Notwithstanding any other provisions of this section:
2-12 (1) a party to a contract or other agreement with a
2-13 warehouse operator may obtain a nonredacted copy of the contract or
2-14 agreement; and
2-15 (2) a person who authored or contributed to the
2-16 creation of financial information may be provided access to the
2-17 financial information for the purpose of confirming the
2-18 authenticity, truthfulness, or accuracy of the information.
2-19 SECTION 2. Subsections (d) and (e), Section 14.031,
2-20 Agriculture Code, are amended to read as follows:
2-21 (d) The bond must be in an amount of not less than \$35,000
2-22 [~~\$20,000~~] and be based on 10 [~~six~~] cents per bushel of storage
2-23 capacity, not to exceed a maximum of \$500,000.
2-24 (e) If the actual net worth of an applicant equals less than
2-25 the greater of either 25 cents per bushel of storage capacity or
2-26 \$200,000, the applicant shall file a deficiency bond in an amount
2-27 equal to the difference between the actual net worth and the greater
2-28 of either \$200,000 or the [~~an~~] amount determined by multiplying 25
2-29 cents times each bushel of storage capacity in the applicant's
2-30 warehouse. A deficiency bond is in addition to the bond required of
2-31 an applicant by this section.
2-32 SECTION 3. Subsection (a), Section 14.066, Agriculture
2-33 Code, is amended to read as follows:
2-34 (a) A department action or order affecting a warehouse
2-35 operator under this chapter [~~, other than by rulemaking, assessment~~
2-36 ~~of an administrative penalty, or imposition of a license sanction,~~
2-37 ~~including a suspension under Section 14.083(c),~~] is appealable in
2-38 accordance with this section unless the action involves agency
2-39 rulemaking, the assessment of an administrative penalty,
2-40 imposition of a license sanction, or any other action for which a
2-41 specific administrative or judicial remedy is available under this
2-42 chapter, Chapter 12 of this code, or Chapter 2001, Government Code.
2-43 SECTION 4. Subsections (a) and (f), Section 14.082,
2-44 Agriculture Code, are amended to read as follows:
2-45 (a) If the department determines that a warehouse operator
2-46 does not possess sufficient grain to cover outstanding receipts and
2-47 outstanding scale weight tickets issued or assumed by the warehouse
2-48 operator, or if a warehouse operator refuses or is unable to submit
2-49 records or property for lawful inspection or the department is
2-50 unable to conduct an inspection of the warehouse due to the
2-51 condition of the warehouse or grain stored in the warehouse, the
2-52 department may seal the warehouse to prevent delivery or receipt of
2-53 grain except as authorized by the department, suspend the license
2-54 of the warehouse operator, and give notice to the warehouse
2-55 operator requiring the warehouse operator to submit records or
2-56 property for lawful inspection, to correct any condition
2-57 interfering with the department's inspection of the warehouse or
2-58 grain, or to cover a shortage of a particular type of grain by:
2-59 (1) storing to the credit of or delivering to each
2-60 depositor affected by the shortage grain of the same type and
2-61 quality that is stored at any of the warehouse operator's licensed
2-62 warehouses in this state and that has been designated as
2-63 company-owned grain by the warehouse operator;
2-64 (2) purchasing and storing to the credit of or
2-65 delivering to each depositor affected by the shortage grain of the
2-66 same type and quality;
2-67 (3) selling company-owned grain of a different type
2-68 and paying to each depositor affected by the shortage, on a pro rata
2-69 basis, the market value of the depositor's grain as determined on

3-1 the day the shortage was discovered by the department; or
3-2 (4) using any combination of the remedies described by
3-3 Subdivisions (1)-(3) or another fair and reasonable method for
3-4 meeting the shortage approved by the department.

3-5 (f) A license suspension issued under this section remains
3-6 in effect until lifted by the department through written notice to
3-7 the warehouse operator or as provided by Section 14.066 [~~At any time~~
3-8 ~~before the 11th day following the day on which the department takes~~
3-9 ~~possession of grain under this section, the warehouse operator may~~
3-10 ~~serve notice on the department to appear in the district court of~~
3-11 ~~the county in which the public grain warehouse is located to show~~
3-12 ~~cause why possession should not be restored to the warehouse~~
3-13 ~~operator. The court shall fix the time of the hearing not less than~~
3-14 ~~5 nor more than 15 days from the date of service of the notice].~~

3-15 SECTION 5. Section 14.083, Agriculture Code, is amended by
3-16 amending Subsection (c) and adding Subsection (f) to read as
3-17 follows:

3-18 (c) In addition to or in lieu of a license suspension
3-19 authorized by another provision of this chapter, if [~~if~~] the
3-20 department considers it necessary, the department may suspend a
3-21 license and prohibit the movement of grain into or out of a
3-22 warehouse for up to 30 days without a hearing [~~for one or more~~
3-23 ~~periods not to cumulatively exceed 30 days in one licensing~~
3-24 ~~period]. For good cause, a suspension under this subsection may be~~
3-25 ~~extended for additional periods of up to 30 days each, not to exceed~~
3-26 ~~a total of 90 days of suspension in a licensing period.~~

3-27 (f) A license suspension under Subsection (c) remains in
3-28 effect until lifted by the department through written notice to the
3-29 warehouse operator or as provided by Section 14.066 or until it
3-30 expires by operation of law in accordance with the department's
3-31 notice of suspension or the limitations provided by Subsection (c).

3-32 SECTION 6. Subsection (a), Section 14.087, Agriculture
3-33 Code, is amended to read as follows:

3-34 (a) On prevailing in an action commenced by the department
3-35 through the attorney general under this chapter [~~or in a hearing~~
3-36 ~~commenced by the warehouse operator under Section 14.082(f)], the~~
3-37 department and the attorney general are each entitled to recover:

3-38 (1) investigation costs and fees;
3-39 (2) reasonable attorney's fees;
3-40 (3) court costs; and
3-41 (4) other costs relating to the action, including the
3-42 cost of depositions and other forms of discovery and copying
3-43 charges.

3-44 SECTION 7. This Act takes effect September 1, 2011.

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